

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NATIONAL COUNCIL FOR ADOPTION,)
BUILDING ARIZONA FAMILIES on behalf)
of itself and its birth-parent clients, birth)
parents D.V. and N.L., and baby boy T.W. by)
and through his guardian ad litem PHILIP)
(JAY) MCCARTHY, JR.,)

Case No. 1:15-cv-00675

Plaintiffs,)
)
)

v.)
)
)

SALLY JEWELL, in her official capacity as)
Secretary of the United States Department of)
the Interior, KEVIN WASHBURN, in his)
official capacity as Assistant Secretary of)
Indian Affairs, BUREAU OF INDIAN)
AFFAIRS, and the UNITED STATES)
DEPARTMENT OF THE INTERIOR,)

Defendants.)
)

ORDER

THIS MATTER is before the court on Plaintiffs National Council for Adoption, Building Arizona Families, on behalf of itself and its birth-parent clients, birth parents D.V. and J.L., and baby boy T.W. by and through his guardian ad litem Philip (Jay) McCarthy, Jr.'s ("Plaintiffs") Motion for Summary Judgment on the Administrative Procedure Act ("APA") Claim (Doc. 20). This case concerns Plaintiffs' claim that Defendants violated the notice-and-comment requirements of the APA by issuing the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10, 146 (Feb. 25, 2015) ("2015 Guidelines"). Defendants argue that the 2015 Guidelines are not non-binding, interpretive rules which are not subject to the APA's notice-and-comment requirements. Oral argument on Plaintiffs' motion was heard on September 25, 2015. For reasons to be stated in a forthcoming Memorandum Opinion and

Order, the Court **DENIES** Plaintiffs' Motion for Partial Summary Judgment because (1) Plaintiffs lack standing to challenge the 2015 Guidelines, (2) the 2015 Guidelines are not a "final agency action" within the meaning of the APA because they do not create legal rights and obligations, and (3) the 2015 Guidelines are non-binding interpretive rules not subject to APA notice-and-comment procedures.

IT IS SO ORDERED.

ENTERED this 29th day of September, 2015.

Alexandria, Virginia

9/29/2015

_____/s/
Gerald Bruce Lee
United States District Judge